

Panaji, 3rd May, 1979 (Vaisaka 13, 1901)

SERIES II No. 5

# OFFICIAL GAZETTE



## GOVERNMENT OF GOA, DAMAN AND DIU

### GOVERNMENT OF GOA, DAMAN AND DIU

Local Administration and Welfare Department

Office of the Registrar of Cooperative Societies

No. RSR-Seva-Keri/78-79

- Read: 1. This office order No. RES(c)-24/Goa/RMC/1976 dated 5-6-1976 superseding the Managing Committee of the Querim Group V. K. S. S. Society Ltd., Querim Satari and appointing Shri Madan G. Teli, Secretary, Village Panchayat, Querim, as Administrator of the society in terms of Section 78(1)(b) of the Maharashtra Co-op. Societies Act, 1960 as applied to the Union Territory of Goa, Daman and Diu to manage the affairs of the society in the initial period of one year.
2. This office order No. RES-(c)-24/Goa/RMC/1977-78 dated 21-12-1978 extending the period of the Administrator appointed by this office order referred at Sr. No. 1 above to manage the affairs of the society for the further period upto 4th June 1979 or till the elected Managing Committee is constituted, whichever is earlier.
3. Proceedings of Annual General Body Meeting held on 7-2-1979 in which a committee of 7 members has been elected.

The Managing Committee of the Querim Group V. K. S. S. Society Ltd., Querim-Satari was superseded vide this office order No. RES-(c)-24/Goa/RMC/1976 dated 5-6-1976 referred at Sr. No. 1 above and Shri Madan G. Teli, Secretary, Village Panchayat—Querim, was appointed as Administrator to manage the affairs of the society in terms of Section 78(1)(b) of the Maharashtra Co-op. Societies Act, 1960 as applied to the Union Territory of Goa, Daman and Diu and in terms of the order at Sr. No. 2 above the tenure of Administratorship has been extended upto 4th June 1979.

In the Annual General Body Meeting held on 7-2-1979 a committee of 7 members has been elected to run the affairs of the society in place of the Administrator and it has been resolved to take over the charge by the new Committee from the Administrator with immediate effect.

In view of the above I pass the following order:—

#### Order

In virtue of the powers vested in me under Section 78(3) of the Maharashtra Co-op. Societies Act, 1960, as applied to the Union Territory of Goa, Daman and Diu, I, Pukh Raj Bumb, Registrar of Co-op. Societies, Goa, Daman and Diu, hereby vacate the Supersession Order dated 5-6-1976 cited at Sr. No. 1 above with effect from the date the Administrator hands over the charge of the society to the newly elected Managing Committee.

Pukh Raj Bumb, Registrar of Co-op. Societies, Goa, Daman and Diu.

Panaji, 12th March, 1979.

No. RSR-I-Seva-Vaguriem/78-79

- Read: 1. This office order No. RES-(c)-52/Goa/RMC/1976-77 dated 29-1-1977 superseding the Managing Committee of Shree Shantadurga V. K. S. S. Society Ltd., Vaguriem-Satari, and appointing Shri Sebastian-da-Costa, E. O. (Coop/VP) Satari as Administrator of the Society in terms of Section 78(1)(b) of The Maharashtra Co-op. Societies Act, 1960 as applied to the Union Territory of Goa, Daman and Diu to manage the affairs of the society in the initial period of one year.
2. This office order No. RES-(c)-52/Goa/RMC/1976-77 dated 17-10-1977 appointing Shri M. S. Pauskar, E. O. (Coop/VP) Satari as Administrator on the place of Shri Sebastian-da-Costa.
3. This office order dated 17-4-1978 extending the period of Administrator upto 28-1-1979.
4. Proceeding of Annual General Body Meeting of the Society held on 6-10-1978 in which a committee of 7 members have been elected.

The Managing Committee of Shree Shantadurga V. K. S. S. Society Ltd., Vaguriem Satari was superseded vide this office Order No. RES-(c)-52/Goa/RMC/76-77 dated 29-1-1977 at Sr. No. 1 above and Shri Sebastian-da-Costa, E. O. (Coop/VP) Satari was appointed as Administrator of the society to manage the affairs of the society in terms of Section 78(1)(b) of the Maharashtra Co-op. Societies Act, 1960 as applied to the Union Territory of Goa, Daman and Diu. Later vide this office order No. RES-(c)-52/Goa/RMC/1976-77 dated 17-10-1977 at Sr. No. 2 above Shri M. S. Pauskar, E. O. (Coop/VP) Satari was appointed as Administrator of the society to manage the affairs of the society on the place of Shri Sebastian-da-Costa.

In the Annual General Body Meeting dated 6-10-1978 a committee of 7 members has been elected to run the affairs of the society in place of the Administrator.

In view of the above, I pass the following order:—

#### Order

In virtue of the powers vested in me under Section 78(3) of the Maharashtra Co-op. Societies Act, 1960 as applied to the Union Territory of Goa, Daman and Diu, I, Pukh Raj Bumb, Registrar of Co-op. Societies, Goa, Daman and Diu, hereby vacate the supersession order dated 29-1-77 cited at Sr. No. 1 above, with effect from the date the Administrator hands over the charge of the society to the newly elected Managing Committee.

Pukh Raj Bumb, Registrar of Co-op. Societies, Goa, Daman and Diu.

Panaji, 15th March, 1979.

No. RES-(c)-29/Goa/LQD/79

- Read: This office order No. RES-(a)-29/Goa/LQD/Notice/75 dated 26-4-75 appointing Shri K. A. Satardekar, Sr. Inspector, Coop. Societies, Panaji, as liquidator of the Kakoda V. K. S. S. Society Ltd., Cacora Quepem (Goa).

## Order

In virtue of the powers vested in me under Section 109(1) of the Maharashtra Coop. Societies Act, 1960 as applied to the Union Territory of Goa, Daman and Diu, I, D. V. Sathe, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu, hereby extend the period of the liquidator of Kakoda V. K. S. S. Society Ltd., Cacora Quepem upto 25-4-1979.

D. V. Sathe, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu.

Panaji, 19th March, 1979.

## No. CON-45/Goa/LQD/79

- Read: 1. This office order No. CON-45/Goa/LQD/78 dated 8-2-78 extending the period of the liquidator of Fatorda Consumers Coop. Society Ltd., Fatorda (Margao) upto 4-2-79.
2. This office order No. CON-45/Goa/LQD/78 dated 28-7-78 appointing Shri G. S. Ekwade, Jr. Auditor, Coop. Societies, Margao as liquidator of the society in place of Shri V. B. Prabhu-gaonkar, Special Auditor, Coop. Societies, Margao.

## Order

In virtue of the powers vested in me under Sub-Section (1) of Section 109 of the Maharashtra Coop. Societies Act, 1960 as applied to the Union Territory of Goa, Daman and Diu, I D. V. Sathe, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu hereby extend further the period of the liquidator of the Fatorda Consumers Coop. Society Ltd., Fatorda-Margao with retrospective effect from 5-2-79 to 4-2-80.

D. V. Sathe, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu.

Panaji, 19th March, 1979.

## No. RES-(c)-88-Goa/LQD/79/Vol. II

- Read: 1. This office order No. RES-(c)-188/Goa/LQD/Notice/75 dated 29-11-75 appointing Shri John F. Mascarenhas, E. O. (Coop-cum-VP), Canacona as liquidator of the Swastik V. K. S. S. Society Ltd., Nagorcem-Palolem-Canacona-Goa.
2. This office order No. RES-(c)-188/Goa/LQD/76 dated 26-10-1976 appointed Shri Jose C. F. Cabral, E. O. (Coop-cum-VP) Canacona as liquidator of the Swastik V. K. S. S. Society Ltd., Nagorcem-Palolem in place of Shri John Mascarenhas.

## Order

In virtue of the powers vested in me under Sub-Section (1) of Section 109 of the Maharashtra Coop. Societies Act, 1960 as applied to the Union Territory of Goa, Daman and Diu, I, D. V. Sathe, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu, hereby extend the period of the liquidator of the Swastik V. K. S. S. Society Ltd., Nagorcem-Palolem-Canacona-Goa upto 28-11-1979.

D. V. Sathe, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu.

Panaji, 19th March, 1979.

## No. RES-(c)-116/Goa/LQD/79

- Read: 1. This office order No. RES-(c)-116/Goa/LQD/Notice/75 dated 19-10-75 appointing Shri John F. Mascarenhas, Extension Officer (Coop/VP) Canacona as liquidator of the Painguinim V. K. S. S. Society Ltd., Painguinim-Canacona.
2. This office order No. RES-(c)-116/Goa/LQD/76 dated 26-8-76 appointing Shri Jose C. F. Cabral, Extension Officer (Coop/VP) Canacona as li-

quidator of the Painguinim V. K. S. S. Society Ltd., Painguinim-Canacona in place of Shri John F. Mascarenhas.

## Order

In virtue of the powers vested in me under Sub-Section (1) of Section 109 of the Maharashtra Coop. Societies Act, 1960 as applied to the Union Territory of Goa, Daman and Diu, I, D. V. Sathe, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu hereby extend the period of the liquidator of the Painguinim V. K. S. S. Society Ltd., Painguinim-Canacona upto 18-10-1979.

D. V. Sathe, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu.

Panaji, 19th March, 1979.

## No. RCS/AR(III)/HSG/38/78-79

- Read: This office order No. RCS/AR(O)/HSG/38/75 dated 15-12-1975 appointing Shri J. D'Mello Sr. Inspector, Coop. Societies as liquidator of the Goa Railwaymen's Cooperative House Building Society Ltd., Sanvordem-Sanguem.

## Order

In virtue of the powers vested in me under Section 109(1) of the Maharashtra Coop. Societies Act, 1960, as applied to the Union Territory of Goa, Daman and Diu, I D. V. Sathe, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu, hereby extend the period of the liquidator of the Goa Railwaymen's Cooperative House Building Society Ltd., Sanvordem-Sanguem with retrospective effect from 15-12-1978 to 14-12-1979.

D. V. Sathe, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu.

Panaji, 19th March, 1979.

## No. RES-(c)-13/Goa/LQD/78-79

- Read: This office order No. RES-(c)-13/Goa/LQD/77 dated 2-12-1977 extending the period of the liquidator of San Jose de Areal Service Coop. Society Ltd., upto 29-6-1978.

## Order

In virtue of the powers vested in me under Sub-Section (1) of Section 109 of the Maharashtra Coop. Societies Act, 1960 as applied to the Union Territory of Goa, Daman and Diu, I, D. V. Sathe, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu hereby extend further the period of the liquidator of San Jose de Areal Service Cooperative Society Ltd., San Jose de Areal, Salcete upto 29-6-1979.

D. V. Sathe, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu.

Panaji, 19th March, 1979.

## No. RCS/AR(III)/Canacona/3/Vol. II/79

- Read: 1. This office order No. RES-(c)-Goa/LQD/Notice/75 dated 1-12-1975 appointing Shri John F. Mascarenhas, E. O. (Coop-Cum-VP) Canacona as liquidator of the Agonda Bhag V. K. S. S. Society Ltd., Agonda, Canacona.
2. This office order No. RES-(c)-19/Goa/LQD/76 dated 26-10-1976 appointing Shri Jose C. F. Cabral, E. O. (Coop-Cum-VP) as liquidator of the society in place of Shri John Mascarenhas.

## Order

In virtue of the powers vested in me under Section 109(1) of the Maharashtra Coop. Societies Act, 1960, as applied to the Union Territory of Goa, Daman and Diu, I D. V. Sathe, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu,

hereby extend the period of the liquidator of the Agonda Bhag V. K. S. S. Society Ltd., Agonda — Canacona with retrospective effect from 1-12-78 to 30-11-1979.

D. V. Sathe, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu.

Panaji, 19th March, 1979.

No. CON-33/Goa/LQD/79/Vol. I

Read: This office order No. CON-33/Goa/LQD/77 dated 12-12-77 extending the period of the liquidator of the Gosalia Mines Staff Consumers Coop. Society Ltd., Melca Sanguem upto 13-5-1978.

#### Order

In virtue of the powers vested in me under Sub-Section (1) of Section 109 of the Maharashtra Coop. Societies, Act, 1960 as applied to the Union Territory of Goa, Daman and Diu, I, D. V. Sathe, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu hereby extend further the period of the liquidator of the Gosalia Mines Staff Consumers Coop. Society Ltd., Melca — Sanguem upto 13-5-1979.

D. V. Sathe, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu.

Panaji, 19th March, 1979.

No. AMG-4/Goa/79

- Read: 1. Certificate of Registration of Satari Taluka Sahakari Kharedi & Vikri Sanstha Ltd., Satari dated 21-2-1966 issued by the Registrar of Cooperative Societies, Panaji.
2. This office letter No. RCS/AR(II)/Reorg/Satari/Bardez/77 dated 7-10-1977 addressed to the Block Development Officer, Satari.
3. Proposal dated 6-3-1979 from the Satari Taluka Sahakari Kharedi & Vikri Sanstha Ltd., Satari for its conversion as Resource Society.
4. Audit Report of the said society for the year 1976-77.

#### Notification

The Satari Taluka Sahakari Kharedi & Vikri Sanstha Ltd., Satari, Goa was registered on 21-2-1966 under registration code symbol No. AMG-4/Goa as Agricultural Marketing Society. The working of the society has found to be satisfactory and its financial position is sound as per the latest available annual statement of accounts. It was therefore, proposed by this office vide letter at Sr. No. 2 above to convert the society into Taluka Farmers Society by changing the classification thereof from Agricultural Marketing Society to Resource society. The society has accordingly submitted a proposal to this office for its conversion into Taluka Farmers Service Society extending its area of operation to whole of Satari Taluka. The proposal has been submitted in terms of sub-rule (3) of Rule 14 of the Cooperative Societies Rules, 1962 as proposed by this office vide letter at Sr. No. 2 above. The scheme prepared by the society for the proposed conversion/re-classification does not involve transfer of liabilities of the society to another society as per the Certificate furnished by the society and as such the procedure as laid down under the proviso to sub-section (1) of Section 17 of the Act read with sub-rules (3), (4), (5) and (6) of Rule 14 is not applicable. In view of the above and after satisfying myself that the procedure required for the conversion has been properly followed, I, V. G. Patil, Assistant Registrar, Cooperative Societies, Goa, Daman and Diu, Panaji hereby pass the following order:—

#### Order

In exercise of the powers vested in me under sections 17 and 12 of the Maharashtra Cooperative Societies Act, 1960,

as applied to the Union Territory of Goa, Daman and Diu read with Rule 14 of the Cooperative Societies Rules, 1962 the Satari Taluka Sahakari Kharedi & Vikri Sanstha Ltd., Satari registered under No. AMG-4/Goa stands reclassified as Resource Society under sub-classification 8(a) — Credit Resource Society under Rule 9 of the Cooperative Societies Rules, 1962. The name of the converted/re-classified society shall be "Satari Taluka Farmers Service Cooperative Society Ltd." and its registered office shall be at Valpoi, Goa. The new society bears registration code symbol No. RES-(c)-211/Goa dated 20-3-1979 and it shall follow new bye-laws as approved.

2. Further, in exercise of the powers vested in me under section 17(4) read with Section 21 of the aforesaid Act, I hereby cancel the registration of the original Satari Taluka Sahakari Kharedi and Vikri Sanstha Ltd., registered on 21-2-1966 under No. AMG-4/Goa.

V. G. Patil, Asstt. Registrar of Coop. Societies, Goa, Daman and Diu.

Panaji, 20th March, 1979.

#### Revenue Department

#### Notification

No. RD/LQN/125/79

Whereas it appears to the Appropriate Government (hereinafter referred to as "the Government") that the land specified in the schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. construction of road by the side of Chapel of Candelaria Baina.

Therefore the Government is pleased to notify under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act") that the said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contracts for the disposal of the said land by sale, mortgage, assignment, exchange or otherwise, or any outlay commenced or improvements made thereon without the sanction of the Collector appointed in paragraph 4 below, after the date of the publication of this Notification, will under clause (seventh) of Section 24 of the said Act, be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette, in due course. If the acquisition is abandoned wholly or in part, the fact will be notified.

4. The Government is further pleased to appoint under clause (c) of Section 3 of the said Act the Deputy Collector (L.A.O.) Collectorate, Panaji-Goa, to perform the functions of a Collector under the said Act in respect of the said land.

5. The Government is also pleased to authorise under sub-section (2) of Section (4) of the said Act, the following officers to do the acts, specified therein in respect of the said land.

1. The Collector of Goa, Panaji-Goa.
2. The Deputy Collector (L. A. O.), Collectorate, Panaji-Goa.
3. The President, Mormugao Municipal Council, Vasco-da-Gama-Goa.
4. The Director of Land Survey, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the office of the Deputy Collector (L. A. O.) Collectorate, Panaji, for a period of 30 days from the date of publication of this Notification in the Official Gazette.

**SCHEDULE**  
(Description of the said land)

Sr. No.	Taluka	Village/Ward	P. T. Sheet No.	Chalta No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1.	Mormugao	Vasco da Gama	156	136/Part H:	Shri Vithu Naik, Baina.	550.00
2.	— do —	— do —	171	4/Part H:	Nossa Senhora de St. Candelaria.	
3.	— do —	— do —	171	95/Part H:	Nossa Senhora de St. Candelaria.	
4.	— do —	— do —	171	12/Part H:	Shri Brasiliano Coelho.	
5.	— do —	— do —	171	102/Part H:	Shri Valentinho Pereira.	
6.	— do —	— do —	171	102/Part H:	Shri Brasiliano Coelho.	
7.	— do —	— do —	171	17/Part H:	Shri Baldomeiro Coelho.	
8.	— do —	— do —	171	104/Part H:	Shri Baldomero Rebello.	
Total: .....						550.00

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

V. V. Mongia, Secretary (Revenue).

Panaji, 11th April, 1979.

**Notification**

No. RD/LQN/124/79

Whereas it appears to the Appropriate Government (hereinafter referred to as "the Government") that the land specified in the schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. For rural water supply scheme to Moira, Bardez (construction of elevated Reservoir).

Therefore the Government is pleased to notify under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act") that the said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contracts for the disposal of the said land by sale, mortgage, assignment, exchange or otherwise, or any outlay commenced or improvements made thereon without the sanction of the Collector appointed in paragraph 4 below, after the date of the publication of this Notification, will under clause (seventh) of Section 24 of the said Act, be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette, in due course. If the acquisition is abandoned wholly or in part, the fact will be notified.

4. The Government is further pleased to appoint under clause (c) of Section 3 of the said Act the Deputy Collector, Goa North Division, Panaji, to perform the functions of a Collector under the said Act in respect of the said land.

5. The Government is also pleased to authorise under sub-section (2) of Section (4) of the said Act, the following officers to do the acts, specified therein in respect of the said land.

1. The Collector of Goa, Panaji-Goa.
2. The Deputy Collector, Goa North Division, Panaji-Goa.
3. The Superintending Engineer, Circle V, Panaji-Goa.
4. The Executive Engineer, Works Division XVII, P.W.D., Panaji-Goa.

6. A rough plan of the said land is available for inspection in the office of the Deputy Collector, Goa North Division, Panaji, for a period of 30 days from the date of publication of this Notification in the Official Gazette.

**SCHEDULE**  
(Description of the said land)

Sr. No.	Taluka	Village/Ward	Sub. Div. No.	Survey No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1.	Bardez	Moira	22/Part	67	O: Comunidade of Moira. <i>Boundaries:</i> North: Survey No. 67/22 South: — do — East: — do — West: — do —	190.00
2.	— do —	— do —	4/Part	48	O: Joseph Pereira. Toyo Eman Corporation India, 1st Floor, United Commercial Bank Ltd., Parliament Street New Delhi, 10001. <i>Boundaries:</i> North: Survey No. 48/4. South: — do — East: — do — West: — do —	600.00
Total .....						790.00

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

V. V. Mongia, Secretary (Revenue).

Panaji, 12th April, 1979.

## Notification

No. RD/LQN/99/79

Whereas it appears to the Appropriate Government (hereinafter referred to as "the Government") that the land specified in the schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. construction of Malcornem Nagvem Road.

Therefore the Government is pleased to notify under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act") that the said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contracts for the disposal of the said land by sale, mortgage, assignment, exchange or otherwise, or any outlay commenced or improvements made thereon without the sanction of the Collector appointed in paragraph 4 below, after the date of the publication of this Notification, will under clause (seventh) of Section 24 of the said Act, be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the

Official Gazette, in due course. If the acquisition is abandoned wholly or in part, the fact will be notified.

4. The Government is further pleased to appoint under clause (c) of Section 3 of the said Act the Deputy Collector, Goa South Division, Margao, to perform the functions of a Collector under the said Act in respect of the said land.

5. The Government is also pleased to authorise under sub-section (2) of Section (4) of the said Act, the following officers to do the acts, specified therein in respect of the said land.

1. The Collector of Goa, Panaji-Goa.
2. The Deputy Collector, Goa South Division, Margao-Goa.
3. The Superintending Engineer, Circle II, P.W.D., Panaji-Goa.
4. The Executive Engineer, Circle VI, P. W. D., Margao-Goa.
5. The Director of Land Survey, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the office of the Deputy Collector, Goa South Division, Margao, for a period of 30 days from the date of publication of this Notification in the Official Gazette.

## SCHEDULE

(Description of the said land)

Sr. No.	Taluka	Village/Ward	Plot No.	Survey No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1.	Quepem	Nagvem	1	15/4	H: Shri Ravindra Kakodkar. T: Francisco Fernandes. Piedade Oliveira. Joao Gracias. Francisco Oliveira. Manuel Dias. <i>Boundaries:</i> North: Shri Ravindra Kakodkar. South: Road. East: Shri Bhavani Malkarnekar. West: Nala.	260.00
2.	— do —	— do —	2	16/2	H: Shri Bhavani Malkarnekar. T: Krishna Bhoto Gaunkar. Sagun Vithoba Raikar. Sudhakar Raikar. Ratnakar Borkar. Ramesh Malkarnekar. Govinda Gaunkar. Santaiagao Carvalho. <i>Boundaries:</i> North: Shri Bhavani Malkarnekar. South: Road. East: Shri Shivram G. Malkarnekar. West: Shri Ravindra Kakodkar.	85.00
3.	— do —	— do —	3	16/4	H: Shri Shivram Gangadhar Malkarnekar. <i>Boundaries:</i> North: Shri Shivram Gangadhar Malkarnekar. South: Road. East: Shri M. B. S. Caculo. West: Shri Bhavani Malkarnekar.	210.00
4.	— do —	— do —	4	16/5	H: Shri M. B. S. Caculo. <i>Boundaries:</i> North: Shri M. B. S. Caculo. South: Road. East: Road. West: Shivram G. Malkarnekar.	85.00
5.	— do —	— do —	5	14/1	H: Shri M. B. S. Caculo. <i>Boundaries:</i> North: Road. South: Shri M. B. S. Caculo. East: — do — West: — do —	110.00

1	2	3	4	5	6	7
6.	Quepem	Nagvem	6	14/2	H: Shri M. B. S. Caculo. T: Mariano Fernandes. Francisco Gracias. Antonio Dias. Antonio Carvalho. Pedro Carvalho. Joao Gracias. <i>Boundaries:</i> North: Road. South: Shri M. B. S. Caculo. East: Shri Sakharam X. S. Borkar. West: Shri M. B. S. Caculo.	280.00
7.	— do —	— do —	7	14/3	H: Shri Sakharam X. S. Borkar, Shri Sridhar G. S. Borkar. Shri Hari S. Borkar. Shri Jaganath S. Borkar. Shri Narendra G. S. Borkar. Shri Nilkant S. Borkar. Shri Vishwamber S. Borkar. Shri Vithoba R. S. Borkar. T: Piedade Oliveira. Lourenco Oliveira. Ramnath Chodnekar. Joao Carvalho. Joao Gracias. Diogo Pixoto. Mariano Fernandes. <i>Boundaries:</i> North: Road. South: Shri Sakharam X. S. Borkar. East: Shri Bhikaro Yeshwant Chari. West: Shri M. B. S. Caculo.	245.00
8.	— do —	— do —	8	13/1	H: Shri Bhico Yeshwant Chari. Shri Fencho Monu Gaunkar. <i>Boundaries:</i> North: Road. South: Shri Bhico Y. Chari. East: Shri Nandu Kakodkar. West: Shri Sakharam X. S. Borkar.	350.00
9.	— do —	— do —	9	13/3	H: Shri Nandu Kakodkar. Shri Suryaji Malkarnekar. Shri Tato Malkarnekar. <i>Boundaries:</i> North: Road. South: Shri Nandu Kakodkar and Others. East: Shri M. B. S. Caculo. West: Shri Bhico Yeshwant Chari.	105.00
10.	— do —	— do —	10	13/6	H: Shri M. B. S. Caculo. T: Shri Mariano Fernandes. Shri Francisco Gracias. Shri Bhico Y. Chari. <i>Boundaries:</i> North: Road. South: Shri M. B. S. Caculo. East: — do — West: Shri Nandu Kakodkar and Others.	690.00
11.	— do —	— do —	11	13/7	H: Shri M. S. B. Caculo. <i>Boundaries:</i> North: Road. South: Shri M. B. S. Caculo. East: — do — West: — do —	110.00
12.	— do —	— do —	12	17/1	H: Shri M. S. B. Caculo. T: Shri Mariano Fernandes. <i>Boundaries:</i> North: Shri M. S. B. Caculo. South: Road. East: Shri M. S. B. Caculo. West: Road.	400.00

1	2	3	4	5	6	7
13.	Quepem	Nagvem	13	17/4	H: Shri M. S. B. Caculo, Panaji. <i>Boundaries:</i> North: Shri M. B. S. Caculo. South: Road. East: Shri M. B. S. Caculo. West: —	120.00
14.	— do —	— do —	14	18/3	H: Shri Caetano Gonsalves, Malkarne, Quepem. <i>Boundaries:</i> North: Shri Caetano Gonsalves. South: Road. East: Shri Filomena Afonso. West: Road.	15.00
15.	— do —	— do —	19	18/8	H: Shri Minuelina Rodrigues, Malkarnem, Quepem. <i>Boundaries:</i> North: Shri Minguelina Rodrigues. South: Road. East: Shri Shivram Gangadhar Sinai Malkarnekar. West: Joanita Cardoz.	30.00
16.	— do —	— do —	20	18/9	H: Shri Shivram Gangadhar S. Malkarnekar, Malkarnem. T: Shri Pedro Cost, Deulamol Joshinho Pereira, Eshforanca Costa, Malkarne Self. <i>Boundaries:</i> North: Shri Shivram G. S. Malkarnekar, Malkarnem. South: Road. East: Shri Shivram G. S. Malkarnekar. West: Shri Minguelina Rodrigues.	240.00
17.	— do —	— do —	21	18/10	H: Shri Shivram G. S. Malkarnekar, Malkarnem. Shri M. B. S. Caculo, Panaji. T: Shri Shiva G. S. Malkarnekar. <i>Boundaries:</i> North: Shivram G. S. Malkarnekar. South: Road. East: Road. West: Shivram G. S. Malkarnekar.	560.00
18.	— do —	— do —	22	10/2	H: Shri M. S. B. Caculo, Panaji. <i>Boundaries:</i> North: Road. South: Shri M. S. B. Caculo. East: — do — West: — do —	400.00
19	— do —	— do —	23	10/3	H: Shri M. S. B. Caculo, Panaji. T: Shri Francisco Gracias Nagvem, Malkarnem. <i>Boundaries:</i> North: Road. South: Shri M. S. B. Caculo. East: — do — West: — do —	15.00
20	— do —	— do —	24	9/4	H: Shri M. B. S. Caculo, Panaji. <i>Boundaries:</i> North: Road. South: Shri M. B. S. Caculo. East: Road. West: Shri M. B. S. Caculo.	675.00
Total .....						4,985.00

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

V. V. Mongia, Secretary (Revenue).

Panaji, 10th April, 1979.

## Notification

No. RD/LQN/129/79

Whereas it appears to the Appropriate Government (hereinafter referred to as "the Government") that the land specified in the schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. for construction of access road at Vellant, Vasco da Gama.

Therefore the Government is pleased to notify under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act") that the said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contracts for the disposal of the said land by sale, mortgage, assignment, exchange or otherwise, or any outlay commenced or improvements made thereon without the sanction of the Collector appointed in paragraph 4 below, after the date of the publication of this Notification, will under clause (seventh) of Section 24 of the said Act, be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette, in due course. If the acquisition is abandoned wholly or in part, the fact will be notified.

4. The Government is further pleased to appoint under clause (c) of Section 3 of the said Act the Deputy Collector, (L.A.O.), Collectorate, Panaji-Goa, to perform the functions of a Collector under the said Act in respect of the said land.

5. The Government is also pleased to authorise under sub-section (2) of Section (4) of the said Act, the following officers to do the acts, specified therein in respect of the said land.

1. The Collector of Goa, Panaji-Goa.
2. The Deputy Collector (L. A. O.), Collectorate, Panaji-Goa.
3. The President, Mormugao Municipal Council, Vasco-da-Gama.
4. The Director of Land Survey, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the office of the Deputy Collector (L. A. O.), Collectorate, Panaji, for a period of 30 days from the date of publication of this Notification in the Official Gazette.

## SCHEDULE

(Description of the said land)

Sr. No.	Taluka	Village/Ward	P. T. Sheet No.	Chalta No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1.	Mormugao	Vasco da Gama	63	1/Part	H: M/s. Dempo Properties Investment Pvt. Ltd.	1,900.00
			63	4/Part	H: Shri Mario Rodrigues.	
			63	5/Part	H: M/s. Dempo Properties Investment Pvt. Ltd.	
			63	11/Part	H: Confraria de Fabrica de Igres de Mormugao.	
			63	14/Part	H: Smt. Hilda Fernandes de Conceicao Nazareth da Silva.	
			63	21/Part	H: Smt. Idly Arauso.	
			63	23/Part	H: Smt. Apoline Gomes.	
			63	25/Part	H: Confraria de Fabrica de Igres de Mormugao.	
Boundaries:						
North: Chalta No. 25, 23, 1, 4, 5, 14,						
P. T. Sheet No. 63, 63						
South: 1						
63						
East: 25, 21, 20, 14, 37, 4, 11, 5						
63, 63						
West: 23, 21, 14, 5, 4						
63						
Total .....						1,900.00

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

V. V. Mongia, Secretary (Revenue).

Panaj, 12th April, 1979.

## Notification

No. RD/LQN/130/79

Whereas it appears to the Appropriate Government (hereinafter referred to as "the Government") that the land specified in the schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. for construction of approach road and School building at Old Vaddem Vasco-da-Gama.

Therefore the Government is pleased to notify under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act") that the said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contracts for the disposal of the said land by sale, mortgage, assignment, exchange or otherwise, or any outlay commenced or improvements made thereon without the sanction of the Collector appointed in paragraph 4 below, after the date of the publication of this Notification, will under clause (seventh) of Section 24 of the said Act, be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect



under Section 6 of the said Act will be published in the Official Gazette, in due course. If the acquisition is abandoned wholly or in part, the fact will be notified.

4. The Government is further pleased to appoint under clause (c) of Section 3 of the said Act the Deputy Collector Goa, South Division, Margao, to perform the functions of a Collector under the said Act in respect of the said land.

5. The Government is also pleased to authorise under sub-section (2) of Section (4) of the said Act, the following officers to do the acts, specified therein in respect of the said land.

1. The Collector of Goa, Panaji-Goa.
2. The Deputy Collector, Goa South Division, Margao-Goa.
3. The Deputy Director of Education, Panaji-Goa.
4. The Director of Land Survey, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the office of the Deputy Collector, Goa South Division, Margao, for a period of 30 days from the date of publication of this Notification in the Official Gazette.

#### SCHEDULE

(Description of the said land)

Sr. No.	Taluka	Village/Ward	Chalta No.	P. T. Sheet No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1.	Mormugao	Vasco-da-Gama	63 Part	91	O: Shri Rajaram Bandekar.	1,150.00
			63 Part	91	O: Shri Jose Roque Godinho. Shri Froiland Massado.	
			70 Part	91	O: Shri Jose Roque Godinho. T: Shri Shridhar Bable Acharekar.	
			73 Part	91	O: Shri Jose Roque Godinho. T: Rohidas Dessai.	
<b>Boundaries:</b>						
North: Chalta No.68, 85 and Road.						
P.T. Sheet No. 91 91						
South: Chalta No. 101, 57, 81 & Road.						
P.T. Sheet No. 92 91 91						
East: Chalta No. 99, 68, 70 & 63						
P.T. Sheet No. 92, 91, 91 91						
West: Chalta No. 52, 64						
P. T. Sheet No. 91						
Total						1,150.00

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

V. V. Mongia, Secretary (Revenue).

Panaji, 12th April, 1979.

#### Notification

No. RD/LQN/127/79

Whereas it appears to the Appropriate Government (hereinafter referred to as "the Government") that the land specified in the schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. for construction of road going by the side of the Lake at Vaddem, Vasco da Gama.

Therefore the Government is pleased to notify under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act") that the said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contracts for the disposal of the said land by sale, mortgage, assignment, exchange or otherwise, or any outlay commenced or improvements made thereon without the sanction of the Collector appointed in paragraph 4 below, after the date of the publication of this Notification, will under clause (seventh) of Section 24 of the said Act, be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette, in due course. If the acquisition is abandoned wholly or in part, the fact will be notified.

4. The Government is further pleased to appoint under clause (c) of Section 3 of the said Act the Deputy Collector (L.A.O.) Collectorate, Panaji-Goa, to perform the functions of a Collector under the said Act in respect of the said land.

5. The Government is also pleased to authorise under sub-section (2) of Section (4) of the said Act, the following officers to do the acts, specified therein in respect of the said land.

1. The Collector of Goa, Panaji-Goa.
2. The Deputy Collector (L. A. O.) Collectorate, Panaji-Goa.
3. The President, Mormugao Municipal Council, Vasco da Gama.
4. The Director of Land Survey, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the office of the Deputy Collector (L. A. O.) Collectorate, Panaji-Goa, for a period of 30 days from the date of publication of this Notification in the Official Gazette.

**SCHEDULE**  
(Description of the said land)

Sr. No.	Taluka	Village /Ward	P. T. Sheet No.	Chalta No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1.	Mormugao	Vasco-da-Gama	68	41 Part	H: Nina Alvares D'Souza.	3,600.00
			68	51 Part	H: Margarita G. Pereira Alvares.	
			68	56 Part	H: Filomena Sanches.	
			68	57 Part	H: Cosmo Araujo.	
			68	60 Part	H: Vicenta Francisca Gracias.	
			68	58 Part	H: Shurch Property.	
			94	65 Part	H: Antonio Gomes.	
<i>Boundaries:</i>						
North: Chalta No. 17, 58, 57						
65 68						
South: Chalta No. 58, 65, 60 Road.						
68 94 68						
East: Chalta No. 41, 51, 56, 57, 60, 70, 58, 65						
68 94						
West: Chalta No. 41, 72, 56, 58, Lake water.						
68						
Total .....						3,600.00

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

V. V. Mongia, Secretary (Revenue).

Panaji, 12th April, 1979.

### Industries and Labour Department

#### Notification

No. ILD/9256/77

In exercise of the powers conferred by rule 37 of the Mineral Concession Rules, 1960, the Lieutenant Governor of Goa, Daman and Diu hereby amends the Government Notification of even number dated 13th November, 1978, published in Official Gazette, Series II No. 34 dated 23-11-78 (hereinafter called as the "Principal Notification") as follows:—

After last para of the Principal Notification, the following shall be added namely:—

"Mrs. Delfina Rita Fernandes shall, on peril of revocation of this order execute within 90 days from the date of the issue of this Notification, a fresh lease deed as contemplated under rule 31 of the Mineral Concession Rules, 1960, for the remainder of the period of the lease".

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

G. M. Sardessai, Under Secretary, Industries and Labour.

Panaji, 26th April, 1979.

### Law Department (Establishment)

#### Office of the Chief Electoral Officer

#### Notification

No. 3.5-77/Elec.

The following notification No. 82/GOA-LA/(1)/77/88 dated 19-9-1978 issued by the Election Commission of India, New Delhi, is hereby published for general information.

K. C. D. Gangwani, Chief Electoral Officer.

Panaji, 3rd March, 1979.

### Election Commission of India

Ashok Road, New Delhi-1.  
dated 19th September, 1978.

Bhadra 28, 1900 (Saka).

#### Notification

No. 82/GOA-LA/(1/77)/78. — In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment of the Judicial Commissioner's Court, Goa, Daman & Diu, dated 22 August, 1978 in Election Petition No. 1 of 1977.

By order,

T. Nagarathnam, Secretary to the Election Commission of India.

Election Petition No. 1/1977.

(Before Shri Tito Menezes, J. C.)

Pankar Raghuvir Shanu, businessman,  
resident of Corlim, Mapusa.

— Petitioner.

vs.

1. Dr. Shripad Lakshiman Cuncoliencar, House No. 69 A, Goa Velha.
2. Shri Teotonio F. Paulo Pereira, Dando, Goa Velha.
3. Shri Francisco Esteveao Pedro L. M. D'Sa, House No. 335, Rua de Ourem, Panaji.
4. Shri Orlando Anthony Dias, 209, Ribandar, Fondulem, Goa, and
5. Shri Salvador Francisco Gonsalves, Nasik Road, Central Jail, Nasik Road, Maharashtra.

— Respondents.

Shri M. S. Usgaonkar with Shri R. D. Khalap, advocates for the petitioner.

Shri Ataide Lobo with Shri P. Mulgaonkar, advocates for the respondent no. 1.

Shri P. P. Shirodkar, advocate for the respondent no. 2.  
Respondents Nos. 3, 4 and 5 in person.

Panaji, August 22, 1978.

### JUDGMENT

This election petition is filed to obtain the annulment of the election of the first respondent (hereinafter referred to as R. 1) and a declaration that the petitioner was elected as a member of the Legislative Assembly of Goa, Daman and Diu ("the Assembly", for short) from the 13-St. Andre Assembly Constituency (for brevity's sake, "the Constituency") in the election held for "the Assembly" on June 1, 1977 (briefly, "the election").

2. Shortly stated the case of the petitioner is as follows:—

The petitioner was one of the candidates for "the election". The six respondents were the other candidates contesting "the election" in "the Constituency". The total number of votes cast was 8263. The results were declared on June 3, 1977. The votes secured by the respective candidates are as under:—

- |  |             |
|--|-------------|
| 1. Dr. Shripad Laximan Cuncolienar, respondent no. 1 ..... | 2817 votes. |
| 2. Shri Raghuvir Shanu Pankar, petitioner                  | 2655 votes. |
| 3. Shri Teotónio F. Paulo, respondent no. 2                | 2412 votes. |
| etc.   |             |

R. 1 was declared elected as he had secured the highest number of votes. R. 1 was not qualified to stand for "the election" and was not qualified to be chosen as a member of "the Assembly" under the Government of Union Territories Act, 1963 (in short "Union Territories Act"), on two grounds, namely, (a) that on the day when the nomination was submitted by R. 1, he was holding an office of profit under the Government of Union Territory of Goa, Daman and Diu shortly stated, "the Government" and (b) that R. 1 continued to hold the said office of profit under "the Government" on the date of his election and also thereafter till the date of the petition.

R. 1 was and is practising medicine at Goa Velha. In June, 1966, R. 1 was appointed by "the Government" as a doctor of the Centre of Public Assistance at Goa-Velha (hereinafter referred to as "the Centre") established by the Provedoria de Assistencia Publica ("the Provedoria", for short). He was till the date of his petition in the service of "the Provedoria". As per the terms of his service R. 1 is being paid Rs. 200/- per month by "the Provedoria". R. 1 has received his salary of Rs. 200/- for the month of May 1977. He was working between 11 a.m. and 1 p.m. at "the Centre" and continued to work there up to the date of the petition.

"The Provedoria" was created by the Legislative Diploma (L.D. in abbreviated form) No. 1200 dated August 7, 1947, later on amended by the L.D. No. 1209 dated 27-11-47. "The Provedoria" was a department of the Directorate of Civil Administration of the Govt. of Goa, Daman and Diu. Its main aim was to co-ordinate and exercise supervision over all the Social Welfare Institutions maintained or subsidized by "the Government" or other administrative bodies and corporations. By L.D. No. 1984 dated 14-4-60 "the Provedoria" was given the status of an autonomous body with juridical personality, having administrative as well as financial autonomy. The members of the staff of "the Provedoria" were given all rights and privileges of Government servants. "The Provedoria" is governed by Portaria No. 7429 dated 31-12-59 read with L.D. No. 1675 dated 25-10-56, L.D. No. 1944 dated 22-10-59 and Portaria No. 7788 dated 7-4-60. The appointments of the members of the staff of "the Provedoria" were made by the Governor-General as per Art. 15 of L.D. No. 1984. R. 1 was appointed by the Government as a doctor to run "the Centre". Later on, by the order no. SPA/785/56 the powers of the Governor-General under Art. 15 were delegated to the Director of Provedoria (referred to as "the Director"). The income of "the Provedoria" was derived from the draw of a lottery. The running of the lottery is the monopoly of "the Government". "The Provedoria" used to administer the funds of "the Government" obtained through the lottery. There were other sources of income created by "the Government" for giving assistance to "the Provedoria", but such other sources of income ceased to exist from the date of liberation of Goa, Daman and Diu. The budget of "the Provedoria" is approved alongwith the budget of "the

Government". The salaries of R. 1 are paid from the budget approved every year by "the Government" in respect of "the Provedoria" in the same manner as the salaries of any other Government employee are paid.

On 5-10-75, R. 1 was appointed as the Insurance Medical Practitioner (I.M.P.) by "the Government", under the Govt. of Goa, Daman and Diu State Insurance (Medical Benefits) Rules, 1975, made under the State Insurance Act, 1948. As per the terms of his appointment, R. 1 has to examine patients covered by the Employees' State Insurance Scheme, established under the Insurance Act. R. 1 is paid a remuneration of Rs. 25/- per insured person family unit per annum. As per the Insurance Rules R. 1 is entitled to extend medical benefits to 750 units. R. 1 was receiving the said remuneration on the date of the filing of his nomination paper and on the date of his election and continued to receive it till the date of the filing of the petition. The appointment of R. 1 as "I.M.P." is made under the Insurance Act. The terms and conditions of service are also governed by the Insurance Act and the Insurance Rules. The office of the "I.M.P." is an office of profit under "the Government".

The nomination for the elections had to be filed between 2-5-77 and 9-5-77. The petitioner and the respondents filed their nominations. At the time of the scrutiny of the nomination papers, which took place on 13-5-77, the petitioner raised an objection against the nomination of R. 1 on the ground that he was holding an office of profit under "the Government". The objection of the petitioner was overruled by the Returning Officer.

As the petitioner has secured 2655 votes which is the majority of the valid votes polled, he is entitled to be declared as elected to "the Assembly", from "the Constituency".

The petitioner prays that the election of R. 1 to "the Assembly" from "the Constituency" be declared void. He further prays that he be declared elected to "the Assembly" from "the Constituency".

3. R. 1 and the second respondent (hereinafter referred to as "R. 2"), resisted the petition. The case of R. 1 is as under:—

No copy of the petition, as required by S.81(3) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act"), attested by the petitioner under his own signature, as a true copy of the petition, was supplied to R. 1.

The petition does not contain material facts regarding the ground on which the election of R. 1 is called in question, as required by S.81 and S.83 of "the Act". R. 1 was not holding any office of profit either on the day on which his nomination was filed or any time thereafter until the date of the filing of the petition. R. 1 did not receive the salary of Rs. 200/- up to the month of May 1977, or any salary. He did no work as such at "the Centre".

R. 1 was appointed by "the Director" as Medical Adviser at "the Centre" on an honorarium of Rs. 200/- p.m. and not on a salary. His appointment was not made with any approval of "the Government". He never occupied any office of profit. There is no post of doctor in "the Centre". He was not holding any post under "the Provedoria" or under "the Government". In any event, "the Provedoria" was not a department of the Directorate of Civil Administration of "the Government". However, as a matter of precaution, R. 1 left the position of medical adviser at "the Centre" before he filed his nomination and his resignation was accepted by the Board of "the Provedoria", on the 1st July 1977 with retrospective effect from 7th May, 1977. By mistake R. 1 accepted the honorarium relating to the month of May, 1977, but returned it as soon as he realized his mistake.

R. 1 is in the medical list of "I.M.Ps", but he was not appointed as "I.M.P." by "the Government". In any event, "I.M.Ps." under the Insurance Scheme are not persons holding an office of profit under "the Government". R. 1 does not have his practice in all the villages of "the Constituency". Only 134 families are in his list for the purpose of receiving treatment under "the Scheme".

The objection raised by the petitioner regarding the nomination of R. 1 was overruled by the Returning Officer. The objection was raised only on the ground that R. 1 was working as a doctor of "the Provedoria".

4. R. 2 contested the petition to a limited extent. He contends that in the event of this Court declaring the election

of R. 1 null and void, it is he, R. 2, and not R. 1, who should be declared as elected. He states that R. 1 got 2655 votes, whereas he got 2412 votes, that is, only 200 votes less than R. 1, but that the votes cast in favour of R. 1 would undoubtedly have been cast in his favour and not in the favour of R. 1. He does not substantiate his contention.

5. The fourth respondent (R. 4) filed his written statement, but does not in fact resist the petition. He states that he was the first person to raise an objection to the nomination of R. 1. He contends that in view of the admissions of R. 1 to the Assistant Returning Officer that R. 1 had submitted his resignation, R. 4 felt that R. 1 had discharged his burden of proof satisfactorily, and that therefore there was no need of adducing any further evidence. R. 4 further states that the Returning Officer "failed and erred in not taking into consideration the admission of R. 1 regarding the tender of his resignation on the 7th May, 1977 and did not further care to ask R. 1 whether his resignation was accepted". In view of the fact that the resignation of R. 1 had not been accepted by the Appointing Authority upto the 1st June, 1977 (date of election) or upto the 3rd June, 1977 (date of declaration of results) and further upto the date R. 1 was sworn as a member of the Legislative Assembly, R. 1 is still deemed to be holding an office of profit under "the Government". I find that the case of R. 4 is confused and ambiguous. It merits no consideration in this Election Petition, which in fact he does not contest. R. 3 and R. 5 did not contest the petition.

6. From the pleadings the following issues arise:—

1. Whether the copy of the election petition delivered to R. 1 is duly attested by the petitioner under his own signature as the true copy of the petition, as required by S. 81(3) of "the Act" and in case the answer is in the negative, whether the petition is to be dismissed in limine.
2. Whether the petition does not contain material facts regarding the ground on which the election of the respondent is called in question as required by Sec. 81 and Sec. 83 of "the Act" and whether the petition is for that reason liable to be dismissed in limine.
3. Whether R. 1 was on 9-5-1977 holding an office of profit under "the Government" within the meaning of Sec. 14 of the Union Territories Act.
4. Whether R. 1, after 9-5-1977 and until the date of his election was holding an office of profit under "the Government", within the meaning of Sec. 14 of the Government of the Union Territories Act.
5. Whether the election of R. 1 is void and in case it is void whether the petitioner is entitled to be declared elected to "the Assembly" from "the Constituency".
6. Whether the votes cast in favour of R. 1 would have been cast in favour of R. 2 as the said votes were adverse to the party to which the petitioner belongs and in case the answer to this issue is in the affirmative, whether R. 2 is entitled to be declared elected to "the Assembly" from "the Constituency".
7. On the first issue the question before me is whether there had been substantial compliance with the requirement of S. 81(3) of "the Act". The copy which was supplied to R. 1 is a true copy of the original. It is a ditto carbon copy of the written script. There is no dispute about this. The corrections inserted by handwriting in ink have also been inserted by handwriting in ink, in the copy supplied to R. 1. The corrections have been initialled by Shri Khalap, an advocate on record for the petitioner. The copy is attested in the following manner:—

"Attested as true copy.

R. S. Pankar

Petitioner".

R. S. Pankar is the signature of the petitioner. This attestation is made on the index of the petition. It is contended by Dr. A. Lobo that the index does not form part of the petition and that therefore there is no attestation on the copy supplied to him at all. He further contends that the attestation does not state that the petition is being attested. In fact the word "petition" is not written in the attestation.

In support of his contentions Dr. Lobo relies on Gayatri Devi's case (AIR 1964 Raj. 223). There the copy of the petition was accompanied by three annexures containing

full particulars of the corrupt practices as required by S. 81(3) (b). The copy attested at the end of Annexure 'C'. The learned Judges forming the Division Bench differed. Shinghal J., as he then was, was of the view that there had been substantial compliance. Modi J., differed. The matter was referred to a third Judge who agreed with Modi J. The majority view expressed by Narayan J., was that there was no substantial compliance with the provisions of S. 81(3). With great respect to the learned Judges who expressed the view of the majority, I am unable to agree with them. The annexures were an essential part of the petition in that case. There is no doubt that the provisions of S. 81(3) are mandatory. An election petition is not an election at law or in equity. I am aware that the High Court cannot dispense with the compliance of the provisions of S. 81(3) by using any of the wide powers ordinarily vested in the Court. The rights accruing to the parties in an election petition are purely statutory. Yet, a substantial compliance with the provisions of S. 81(3) would, in my humble opinion, suffice. What is necessary is that the petitioner should have the intention to certify the copy as true. Judged in this light, it might be difficult to hold that the petitioner in that case did not have animus attestandi in respect of the copy of the petition and the Annexures A and B when he signed at the foot of the Annexure C, since all the annexures formed an integral part of the petition.

The view taken by Shinghal J. gets support from Dr. V. A. Syed Mohammed's case (AIR 1978 S. C. 840). The argument in this latter case which found favour with the High Court was that though the affidavit containing the particulars of corrupt practices as required by 'the Act' was signed at the foot of the copy of the affidavit, the copy of the petition had also to be signed. The Supreme Court while negating this finding held that there was sufficient compliance with the provisions of S. 81(3). It is contended by Dr. Lobo that the present case can be distinguished from Dr. Syed Mohammed in as much as the affidavit formed an integral part of the petition there, whereas the index could not be said to form an integral part of the petition here. I agree that there is a difference between an index and an affidavit or an annexure containing particulars of corrupt practice. However, it is a long standing practice in Courts of Law to require the petitioner to annex an index to the petition and its annexures. Such indexes are ordinarily considered to be a necessary appendage to the petition. When R. 1 supplied copies of the written statement to R. 2, R. 4 and R. 5, he obtained the signature of R. 2, R. 4 and R. 5 on the copy of the index of the written statement of R. 1, in testimony not only of having supplied to those respondents a copy of the index but also the copy of the entire written statement. It could not possibly be argued by R. 1 that it was not the intention of R. 2, R. 4 and R. 5 to acknowledge the receipt of the index only. Obviously, when R. 1 allowed R. 2, R. 4 and R. 5 to write the acknowledgement of the receipt of the copy on the index of the copy, he considered the index as part of the written statement. If the argument of Dr. Lobo, that attestation on the copy of the index is not an attestation of the copy of the petition, is taken to its logical conclusion it might also be said that an attestation made on the last page of the copy of the petition is an attestation of the last page of the copy only and not an attestation of the entire copy.

In *Ch. Subbarao v. Member, Election Tribunal, Hyderabad and Others* (A.I.R. 1964 S. C. 1027) the Election Petition was typewritten and the copies which accompanied the petition were carbon copies of the typescript, so there was no question of the copies being other than 'true' copies. The copies bore two signatures in original of the Election Petitioner authenticating both, the contents of the petition as well as the verification thereof. The petitioner did not, however, insert the words 'true copy' before or above his signatures. The High Court considered that this rendered the petition one not in accordance with S. 81(3) of the Act and on this ground dismissed the Election Petition. In appeal Their Lordships of the Supreme Court made the following observations:—

"An election petition is not to be equated to an election at law or in equity, but as the rights are purely the creature of statute, if the statute renders any particular requirement mandatory, the courts possess and can exercise no dispensing power to waive noncompliance. The purpose for which Part VI is intended, is that elections are conducted in accordance with the relevant statutory provisions framed to ensure purity and orderliness and that the candidate who has not obtained a majority of valid votes or has obtained it in flagrant breach of the statutory provisions is not held entitled to represent the constituency. It cannot

be urged that the jurisdiction of the Election Tribunal under S.90(3) to dismiss an election petition which does not comply with the provisions of S.81 is attracted only if there is a defect in the petition itself and that a defect merely in the copy accompanying the petition would not be a case of a petition not complying with the provisions of S.81 so as to require or even permit the Tribunal to dismiss the petition. When S.81(3) requires an election petition to be accompanied by the requisite number of copies, it becomes a requirement for the presentation of the election petition to the Commission, and therefore a condition precedent for the proper presentation of an election petition. If that is a requirement of S.81, no distinction can be drawn between the requirements of sub-sections (1) and (2) and of sub-section (3). If there is a total and complete noncompliance with the provisions of S.81(3), the election petition might not be "an election petition presented in accordance with the provisions of this Part" within S.80 of the Act. If there had been such a noncompliance with the requirement of sub-section (3) not merely the Election Commission under S.85 but the Election Tribunal under S.90(3) would prima facie not merely be justified but would be required to dismiss the election petition."

Notwithstanding these observations the Supreme Court considered the question whether there was substantial compliance with S.81(3) and held that there was. The order of the High Court was quashed, the appeal allowed and the petition was directed to be heard.

There are some other cases decided by superior Courts in India where bare signatures of the petitioners made on the copy of the petition were considered as attestations.

8. It is contended by Shri Usgaonkar relying on 'Ratnakar Mohanty v. Jugal Kishore Patnaik', A.I.R. 1976 Ori. 85, that the fact that the Registrar has duly received the copies alongwith the petition raised a presumption under S.114 (g) of the Evidence Act, 1872, that the copies filed 'were true copies. I cannot subscribe to this view. The facts in A. I. R. 1976 Ori. 85 are different from those in the instant case. There the presumption raised was only one regarding the filing of the copy alongwith the petition and not about the attestation of the copies of the petition. The second part of S.81(3) which relates to attestation of copies was not at all attracted in that case.

9. After considering all the facts involved in this question it appears to me that it is not possible for me to hold that the petitioner did not have the intention of attesting the petition when he made the endorsement regarding attestation on the index of the petition. The first issue is decided in favour of the petitioner.

10. In the second issue the question raised by R.1 is that the petition does not disclose material facts regarding the ground on which the election petition is called in question. The petition is based on two grounds. The first is that on the day of the election R.1 was not qualified to be chosen to fill a seat of "the Assembly" under the Government of Union Territories Act, 1963 (hereinafter referred to as the "Union Territories Act"). The second ground will be considered later.

It is argued by Dr. Lobo that the ground speaks of qualification and not of disqualification. This is not a material defect. The fact that the respondent was occupying an office of profit under "the Government" on the date of the election is clearly mentioned. Occupying an office of profit under "the Government" is a disqualification and not a "non-qualification". It is evident from this fact that the words "not qualified" are used to mean, "disqualified". It is true that these two phrases were used in the "Union Territories Act" with different connotations. However, in a loose way, one of the phrases is used for the other.

11. The second ground is under S.100(1) Clause (d)(i). The facts averred in relation to this ground are that R.1 was not qualified to stand as a candidate for the election and was not qualified to be chosen as a member of "the Assembly", under the "Union Territories Act", on the ground that on the day on which the nomination was submitted by him, he was holding an office of profit under "the Government" and that he continued to hold the said office of profit under "the Government" on the date of his election. In relation to this ground it is further stated by the petitioner in paragraph 12 as follows:—

"Para 12:—At the time of the scrutiny which took place on 13-5-1977, the petitioner raised an objection,

against the nomination of the respondent no. 1 on the ground that he was holding an office of profit under Government of the Union Territory of Goa, Daman and Diu. The objection raised by the petitioner was overruled by the Returning Officer. The petitioner maintains that the respondent no. 1 was not qualified to stand for election and to be chosen as the member of the Legislative Assembly of the Union Territory of Goa, Daman and Diu and hence his election to the Legislative Assembly of Goa, Daman and Diu is void."

It is argued by Dr. Lobo that all the material facts regarding this ground were not disclosed in the petition. It is pointed out that the petitioner has stated that R.1 was not qualified, because he was occupying an office of profit under the Government when the nomination was submitted. It is contended that holding an office of profit under the Government on the day of the nomination is not a disqualification. It is true that the petitioner has not stated that R.1 was holding an office of profit on the day of scrutiny, i.e., on 13-5-1977. The argument of Shri Usgaonkar is that the petitioner has stated in Clause (b) of paragraph 5 that R.1 continued to hold the same office of profit under "the Union Territories Act" on the date of his election. Shri Usgaonkar concludes from this statement that R.1 was occupying an office of profit on the day of nomination, i.e., on 9-5-77 and that he continued to occupy it till the date of election. I agree. The effect of all these averments in the petition is that the petitioner has pleaded that R.1 was occupying an office of profit on the day the nomination was filed and continued thereafter to occupy that office without interruption until the date of the filing of the petition, i.e., that R.1 was in occupation of an office of profit on the relevant dates which are the date of the scrutiny and the date of election. Apart from this the petitioner has also stated at para 5 of the petition that at the time of scrutiny he raised an objection against the nomination of R.1 on the ground that he was occupying an office of profit under the Government.

Dr. Lobo then seeks support to his argument in the averments of the petitioner contained in para 14 of the petition. In that paragraph the petitioner states that the cause of action arose on 9-5-1977 and again on 3-6-77. The petitioner does not state that the cause of action arose on 13-5-77, the day of scrutiny or on 1-6-77, the date of election. The averments regarding cause of action are made only for the purpose of limitation and they are relevant only for that purpose. In the present case no question of limitation was raised. The discrepancies in para 14 cannot whittle down the effect of the statements in the petition regarding the occupation of an office of profit by R.1 on the day of scrutiny and on the day of election.

I agree with Shri Usgaonkar that in the case of improper acceptance of the nomination of a returned candidate there is no need of stating that the result of an election has been materially affected. In 'Durai Muthuswami vs. N. Hachiappan and Others' (1973) 2 S.C.C. 45, it was decided that in cases similar to the present one it was not necessary to aver that the result of the election had been materially affected as required by S.100(1)(d).

It is then argued by Dr. Lobo that R.1 has not stated that there had been an improper acceptance of the nomination of R.1. The contention of Shri Usgaonkar is that from the averments in the petition that R.1 was occupying offices of profit on the day he filed his nomination and continued to occupy them until the date of filing of the petition it can be inferred that he was disqualified to file his nomination and that the acceptance of his nomination was improper. I agree that the inference is logical and that it dispenses a specific averment that there had been an improper acceptance. It is urged before me on behalf of R.1 that the petitioner had admitted that after raising the objection to the nomination of R.1, that he was not pressing it because he believed the word of R.1 that R.1 had already resigned from the office at "the Centre"; that upon his statement, the Returning Officer accepted the nomination of R.1; that there was, in the present case, a clear withdrawal of the objection to the nomination of R.1; that it was upon such withdrawal that the acceptance of nomination was made; that the Returning Officer did not adjudicate upon the legality of the nomination of R.1 and that, therefore, there was no improper acceptance as such; that in any event, no order of improper acceptance was placed before this Court to enable it to adjudicate on the point. All these arguments go overboard in face of the pleadings of R.1 who has specifically averred at paragraph 14 of his written statement that the objection of the petitioner was overruled by the Returning Officer.



12. The contentions raised by R. 1 on the second issue fails. The petition discloses the facts material to grounds under Sec. 100(1) (a) and 100 (1) (d) (i).

13. I shall now take up the third and the fourth issues together. It is stated that R. 1 was occupying, on the date of election, the offices of Medical Adviser at "the Centre" and of "I. M. P." in E. S. I. Corporation. This issues involves four questions, namely:—

I. Whether R. 1 was at all occupying a position at "the Provedoria" on the date of election or on the day of scrutiny.

II. Whether the alleged offices were at all offices.

III. Whether the offices were offices under "the Government"; and

IV. Whether the offices were offices of profit.

Questions II, III and IV relate to both the offices, but I shall first proceed to consider all the four questions in relation to the office of Medical Adviser.

14. On question I of these issues, two contentions were raised. Firstly that R. 1 has ceased to occupy the office because the office ceased to be in existence from the 1st May, 1977 as the functions assigned to it were no longer existing and secondly that he tendered his resignation with effect from 7-5-77 and the resignation was accepted by the Board with effect from that date.

Dr. Lobo states that according to Exh. P. 1 (letter of May 20, 1966) the Medical Adviser was to supervise the working of a small maternity and first aid ward and a first aid unit for minor surgical emergencies. Admittedly the maternity ward was never opened and never functioned. Admittedly also the first aid unit for minor surgical emergencies at the Centre was stopped by the Provedoria on April 30, 1977. Dr. Lobo states that the work of looking after the inmates of "the Centre" was neither proposed by the Director nor approved by "the Government". He concludes that there was no work at all to be done by the Medical Adviser from May 1, 1977. Now, by the letter of June 10, 1966 (Exh. P. 24) the Director specifically informed R. 1 that looking after the health of the children interned in "the Centre" and the personnel working there, would be one of his duties. It was stated by Mr. Pereira P. W. 2 that R. 1 was looking after the inmates at "the Centre". This was not challenged in cross-examination. Having in view the purpose for the creation of the Centre it is but natural that such an assignment should be given to the Medical Adviser of the Centre. There is evidence that the Doctor continued to work in the Centre in the months of May and June. I shall discuss this evidence later. I as, therefore, unable to accept the contention of Dr. Lobo that R. 1 was not occupying any office after the 30th April, 1977 as there was nothing at "the Centre" to be looked after from that day onwards. Neither can I accept the contention that considering the nature of the engagement of the services of R. 1, he could just leave the office of the Medical Adviser whenever he desired after giving a bare intimation to the Provedoria. R. 1 himself does not appear to have thought that he was entitled to do so. Not only did he write a letter of resignation, but pressed upon the Authorities to accept it, as can be seen from the evidence on record.

15. It is then contended by Dr. Lobo that even if it is accepted that there was, after 30-4-77 some functions to be performed by R. 1, the petitioner failed to prove that R. 1 was in fact working at "the Centre".

Pereira P. W. 2 has stated that R. 1 had collected his pay of Rs. 200/- per month for the months of May and June after duly submitting the pay bill; that R. 1 stopped working at the Centre from July 1977; that the stewardess at the Centre prepares the bills for all employees of the institution, collects signature of all of them on the pay bills and takes the pay bills to the head office for payment; that she collects the money, takes it to the institution and distributes it to the employees. Pereira produced the pay bills for the months of May and June, 1977, alongwith two forwarding letters. The signatures of the Stewardess on the pay bills and forwarding letters were identified by Pereira. The pay bills and forwarding letters were taken on record. The signatures of R. 1 on the pay bills were identified. They are not challenged. It is, therefore, not challenged that R. 1 submitted pay bills and collected the pays for the months of May and June. It is in this background that we have to assess the evidence of the witnesses regarding the question as to whether R. 1 was

working at the Centre or not, after he had submitted his resignation.

Shirodkar P. W. 5 has stated that he once went to the Centre to get the help of a nurse because of the delivery of a lady neighbour of his; that as the nurse was reluctant to come he had to request the Doctor (R. 1) to ask the nurse to go; that the Doctor (R. 1) in fact asked the nurse to go and the nurse accordingly went and helped the lady in the delivery. P. W. 5 further states that two days after the delivery of the lady he went to the Centre to bring medicine and found that the Doctor (R. 1) was there. P. W. 5 has also stated that when a few days later a boy got hurt near the eye his wound was dressed by the Doctor (R. 1) at the Centre with the help of a nurse.

It is not possible for me to believe that R. 1, who is a doctor, would submit his pay bills duly signed and would collect, on that strength, his pay not for the month of May, 1977, alone but for the month of June, 1977 also, without working at the Centre. It is also not possible for me to believe that the Stewardess had prepared the pay bills of R. 1 for the month of May, 1977 and June, 1977, submitted them to the Provedoria, collected the pays of R. 1 for these two months, amounting to Rs. 400/- and handed them over to R. 1 even though R. 1 has not been working at the Centre during the months of May and June, 1977. I find that R. 1 has in fact worked at the Centre during the months of May, 1977 and June, 1977. He has worked after he has submitted his resignation on 7-5-77. But this is not all. Besides working, R. 1 submitted on 18-6-77 an application dated 16-6-77 requesting the Provedoria not to consider his application dated 7-5-77 since he desired to continue to render his services at the Centre at Goa Velha. The fact that by the letter dated 16-6-77 R. 1 withdrew his application for resignation dated 7-5-77 is not denied. The contention of R. 1 that he collected his pay for the months of May and June, 1977, by mistake cannot therefore be accepted. It must be noted that R. 1 has not stated in his pleading, that he had received his pay for the month of June, 1977, by mistake.

16. The important question as to whether the resignation of R. 1 submitted on 7th May, 1977 was valid and whether in consequence of it he is deemed to have ceased occupying the office of Medical Adviser at "the Centre" has to be discussed in detail.

The letter of resignation is not on record, but it is evident from the records that R. 1 did tender his resignation with effect from the 7th May, 1977. It is not known to whom the resignation was tendered, but it is to be presumed that he submitted it to the Council of Provedoria, because he states at paragraph 4 of his written statement that his resignation was accepted by the Board. The Board could not mean anything else but the Council of Provedoria. R. 1 states that his resignation had been accepted by the Board on 1-7-77 with retrospective effect from 7-5-77. R. 1 has not stated that he has submitted his resignation to the Government and that it was accepted by the Government on 25-2-78 with effect from 7-5-77. It is argued by Shri Usgaonkar that in view of these pleadings R. 1 cannot be allowed to rely on Exh. R 1/1, (letter of acceptance of resignation by Government). The aforesaid pleadings of R. 1 must be considered along with his plea that he was not appointed by the Government. The case of R. 1 was that he was appointed by the Provedoria and it is obvious that it was on account of this fact that R. 1 submitted his resignation to the Board and not to the Government. According to the pleading of R. 1 the acceptance of resignation is not the acceptance by the Government conveyed by the Director's letter dated 28-2-78 (Exh. R1/1), but the resolution of the Council of Provedoria passed in its meeting held on the 1-8-77 (written 1-7-77 by mistake) which, as can be seen by the resolution itself, is not an acceptance of resignation, but merely a proposal for acceptance of resignation.

The next contention raised by Shri Usgaonkar regarding resignation is that the resignation submitted by R. 1 on 7-5-77 was bad in law, null and in-operative as R. 1 continued to work with the Provedoria even after that date. It is stated that the resignation dated 7th May was withdrawn by a letter dated 16th June; that the withdrawal was valid because R. 1 continued to work and expressed the desire to continue to render his services to the Centre. It is stated that the subsequent letter dated 8-7-77 was written on the day on which the election petition was filed and because such petition had been filed. It is further stated that Government could not, on the basis of the letter dated 8-7-77 grant the resignation to R. 1 with retrospective effect from 7-5-77

because R. 1 had worked and collected his pay and should be deemed to be in service of the Provedoria up to the end of June, 1977. The acceptance, it is stated, could be made on the strength of the letter dated 8-7-77 because the first letter of resignation had lost its validity not only because it was withdrawn but also because R. 1 had worked and collected his pay for the months of May and June, 1977. However, if the acceptance of the resignation was to be made on the strength of the letter of July, 8, 1977, it would have to be made with effect from this date and not with effect from May 7, 1977. This was not done either by Government or by the Council of Provedoria. I accept this contention of Shri Usgaonkar. The cumulative effect of the pleadings, of the letters and of the actions of R. 1 is that he could not resign from his office and has not validly resigned while he was working in the Provedoria and was collecting his pay.

17. In 'Smt. Indira Nehru Gandhi V. Raj Narain' (A. I. R. 1975 S. C. 2299) Yeshpal Kapoor submitted his resignation and left service on 13-1-71. His resignation was accepted by the President of India on 25-1-71 with retrospective effect from 14-1-71. It was contended that his resignation was effective only from 14-1-71. Their Lordships of the Supreme Court held that as he did not work after 13-1-71 and drew no salary as Government servant after that date his resignation had been accepted. His resignation could therefore be effective as from 13-1-71. This decision is not clearly on the point before us but it can be said, *ad contrari sensu*, that if Yeshpal Kapoor had worked and received his salary after the date on which he tendered his resignation, that is 13-1-71 the tendering of the resignation as well as its acceptance would be bad in law.

18. The Supreme Court considered the question of resignation from an office in 'Union of India and Others V. Gopal Chandra Misra and Others' (1978) 2 S. C. C. 301. There their Lordships considered the meaning of the word 'resignation'. The dictionary meaning of to 'relinquish an office' is to 'cease to hold' the office or to 'loose hold of' the office; and to 'loose hold of office', implies to 'detach', 'unfasten', 'untie the link' which holds one to the office and the obligations and privileges that go with it. In the general juristic sense the meaning of resigning office is not different. There also, as a rule, both, the intention to give up or relinquish the office and the concomitant act of its relinquishment, are necessary to constitute a complete and operative resignation. Thus, resigning office necessarily involves relinquishment of the office, which requires cessation or termination of the office. Indeed, Their Lordships observed, the completion of the resignation and the vacation of the office, are the causal and effectual aspects of one and the same thing. It is true that in Gopal Chandra Misra the resignation was to be effective from a future date but the question there was similar to the present one in as much as the link between the holder and the office was not served until a future date and it was therefore that Their Lordships held that the resignation could not be held to be effective from the date on which it was submitted. The rule, in 'Jai Ram v. Union of India' (A. I. R. 1954 S. C. 584), namely, that:—

"It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer, to give him the requisite permission to change his mind subsequently and ask for cancellation of the permission thus obtained; but, he can be allowed to do so as long as he continues in service and not after it has terminated".

was reiterated by the Supreme Court in 'Raj Kumar v. Union of India' (1968 3 SCR 857) in these words:—

"When a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority, and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority, the public servant concerned has *locus poenitentiae* but not thereafter".

The question, in (1978) 2 SCC 301, was of a resignation of a Judge who is a constitutional functionary but Their Lordships observed that in case of a Government Servant or a functionary who cannot, under the conditions of his

service or office, by his own unilateral act of tendering his resignation, give up his service or office, normally, the tender of resignation becomes effective and his service or office of tenure terminated, when it is accepted by the competent authority. In case of a resignation on the prospective date, the law is well settled that the resignation does not become effective until the prospective date arrives. This is so because of the well laid down principle that there cannot be different times one for the resignation and the other for vacating the seat. In the case before me the seat was not vacated on 7-5-77. R. 1 continued in the seat and continued to receive his pay. His resignation could not, therefore, be accepted with retrospective effect from 7-5-77. The tendering of his resignation itself is bad because it was not accompanied by the vacation of the seat.

19. In any event the resignation of R. 1 had not been accepted at or before the date of the scrutiny or at or before the date of election. He is deemed to be in occupation of the office on these two days. The question as to whether he was occupying an office on those two days cannot be judged taking into consideration the facts that exist now when the election petition is being disposed of. It has to be assessed in relation to facts as they stood on those two days alone are relevant to the present inquiry.

20. On question II of the 3rd and 4th issue, it is contended by Shri Usgaonkar that R. 1 was occupying a regular post at "the Centre", or that, in any event, he was occupying an office there.

Art. 20th of L. D. 1894 by which the Provedoria is governed, lays down that "the Provedor" and the staff members of the head office and of the institution affiliated to "the Provedoria" shall be public functionaries enjoying all the rights, duties and privileges inherent to them including the right to pension. The cadre constituted by "the Provedor" and the members of the staff was formed by L. D. 1894 and incorporated in an Annexure to it. There were in the cadre, *inter alia*, 18 Midwives. No post of doctor was included in it. By the notification dated 25th March, 1974, "the Government" framed rules called the Goa, Daman and Diu Provedoria da Assistencia Publica (Fixation of Pay, Allowance, Cadre and Conditions of Service of Employment) Rules, 1974. Rule 3 provides that the staff of "the Provedoria" shall be the staff mentioned in the Schedule I annexed to the said Rules. The conditions of service of the members of the staff were, according to the Rules, to be the same as those governing the employees of "the Government". The pay scales were to be those mentioned in Schedule II attached to the said Rules. In the Schedule I under Sub-head (e), namely, Social Welfare Centre Goa-Velha, one post of Stewardess, one post of Assistant Stewardess and three posts of Peon-cum-Cleaner are shown. No post of doctor is shown either under that Sub-head or at all, in Schedule I. There is no pay scale attached to the office of doctor in Schedule II. There was no post of doctor until the Rules were amended on 7th July, 1977. The amendment was carried out after "the election" and an honorary post of doctor was created at "the Centre". Considering the above facts I have no difficulty in holding that there was no post of doctor at "the Centre" before "the election".

21. Shri Usgaonkar contends that the facts that the post of R. 1 was a part-time post or that his post was not included in the cadre of the staff of "the Provedoria", or any of its affiliated institutions, are not sufficient to warrant the conclusion that R. 1 was not holding a post. It is argued by him on the authority of 'The State of Assam and Others vs. Kenak Chandra Dutt' AIR 1967 S. C. 884; 'M. Ramappa vs. Sangappa', AIR 1958 S. C. 937 and 'The Post Master General, Andhra Circle, Hyderabad-1 vs. M. Kristaiah and Others', AIR 1967 S. C. 884, that the fact that R. 1 was not a whole-time employee or that his post was not mentioned in the cadre did not affect his position as the occupant of a post. The facts in 1967 S. C. 884 differ from those in the present one. There, under the Mauzadari system of collecting revenue prevailing in Assam, the revenue charge of a Mouza and the responsibility for the whole revenue of it in the first instance rests with the Mauzadar. The Mauzadar was spoken of as a "revenue collector". The Mauzadary system is well-established and is mentioned in the Assam Revenue Manual. The executive instructions in the Manual prescribed the method of selection, appointment and dismissal of a Mauzadar, the duties and emoluments of the office, and the registers to be kept and maintained by him. The Mauzadar is generally an influential and well-to-do resident of his Mouza. The Mauzadar's successor is selected from amongst the members of his family. Every Mauzadar before his

appointment has to execute a written agreement (kabuliyat) in the prescribed form. He is also required to produce security to the satisfaction of the Deputy Commissioner. A Mauzadar is a public servant whose primary duty is to collect Land Revenue and other Government dues, the collection of which he is entrusted with. He is responsible for collection of poll-tax, house-tax, tauzibahir revenue, grazing fees and forest dues. He undertakes to pay into the treasury the full amount of all instalments of land revenue and local rates included in the Jamabhandi and of house-tax, poll-tax and grazing fees within one month of the date on which they fall due for payment. He is charged with special duties of supervising the performance of duties by Gaonburas and to receive applications for waste lands. He is given the power to entertain such applications and to submit them with a report to the proper revenue authority. There are various other functions and duties assigned to the post of Mauzadar. The Mauzadar exercises some power vested in and some functions of the Government and this indeed is the vital test. It is not therefore difficult to see the distinction which goes between the office of the Mauzadar and the office of Medical Adviser at "the Centre".

'M. Ramappa v. Sangappa' (AIR 1958 S. C. 937), where Patels and Shanbogs were held to be occupying posts, adopts the same reasoning.

The authority cited in support of the argument that what R. 1 was occupying at "the Centre" was an ex-cadre post, namely, 'The Postmaster General, Andhra Circle, Hyderabad-1, etc. and others vs. M. Kristiah etc.' AIR 1977 S. C. 1677, does not take the case of the petitioner any further. Extra Departmental Agents connected to the Postal Department, were held to be holders of civil posts under the Union of India. It appears that the similarity is sought to be drawn between "Andhra Circle" and the case before me is based on the words "Extra Departmental Agents", occurring in that case, because the post that R. 1 was holding was not within the cadre of the staff of "the Provedoria". It must however be noted that Extra Departmental Agents in Post Office in that case were occupying posts within an Extra Departmental cadre and their conditions of service were regulated by the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964. The post was outside the regular Civil Services, but the said Rules made it clear that the Extra Departmental Agents worked under the direct control and supervision of the authorities, who had the right to supervise the manner in which they must carry out their duties. In the instant case, L. D. 1984 governing "the Provedoria", does not create nor regulate any extra departmental posts.

22. As regards the question whether the functions exercised by R. 1 at "the Centre" were an office, the contention of Dr. Lobo is that there were no duties assigned to the office of Medical Adviser at "the Centre", nor was there any continuity assured to that position and that the office of the Medical Adviser at "the Centre" does not have an existence independent of R. 1. Dr. Lobo concludes that R. 1 was not occupying an office at "the Centre". The definition of "office" given by Justice Rowlatt in (1922) 8 Tax. Cas. 231 and the observations of Lord Wright which have been quoted with approval by Their Lordships of the Supreme Court, in 'Smt. Kanta Kathuria vs. Manak Chand Surana' AIN 1970 S. C. 694, throw light on this subject. Justice Rowlatt said:—

"Now, it is argued, and to my mind argued most forcibly, that that shows that what those who use the language of the Act of 1842 meant, when they spoke of an office or an employment, was an office or employment which was a subsisting, permanent, substantive position, which had an existence independent from the person who filled it, which went on and was filled in succession by successive holders and if you merely had a man who was engaged on whatever terms, to do duties which were assigned to him, his employment to do those duties did not create an office to which those duties were attached. He merely was employed to do certain things and that is an end of it; and if there was no office or employment existing in the case as a thing, the so-called office or employment was merely an aggregate of the activities of the particular man for the time being. And I think myself that that is sound. I am not going to decide that, because I think I ought not to in the state of the authorities, but my own view is that the people in 1842 who used this language meant by an office a substantive thing that existed apart from the holder." And Lord Wright observed:—

"The word 'office' is of indefinite content; its various meanings cover four columns of the New English Dictio-

nary, but I take as the most relevant for purposes of this case, the following: 'A position or place to which certain duties are attached', specially one of a more or less public character'."

On facts Their Lordships of the Supreme Court held that Kanta Katuria who had been appointed as Special Government Pleader to conduct a case was not holding an office. There was no office of Special Government Pleader. In my humble opinion the word 'Special' indicates that Kanta Katuria was specially appointed for the occasion. This is not the case in the present petition.

Dr. Lobo points out that by Ex. R.1/3 (April 27, 1966) R.1 was requested to do some work before any office was created. This is true, but it was not established that R.1 began work at "the Centre" before the creation of the office. The second paragraph of Exh. R.1/3 and Exhs. P.20, P.21, P.24, disclose the entire process of the creation of an office with set duties and obligations attached to it. In Exh. R.1/3 "the Director" speaks of the approval of the work to be assigned to the office and of the terms and conditions of service. Exh. P.20 specifies the work and the duties of the office. They are stated to be of rendering full-fledged medical assistance to poor people, of supervising a small maternity and first-aid ward and of the first-aid unit for minor surgical emergencies (sic.). It speaks of the working hours, of the honorarium, etc. In Exh. P.24 (letter dated June 10, 1966) "the Director" informed R.1 of the approval of the proposal of the work to be assigned to and of the honorarium to be paid to the holder of the office. The letter of approval, Exh. P.21, does not mention the name of R.1. The clear impression that one gets after reading all these letters is that the office of Medical Adviser had an existence independent of R.1. Para 4 of Exh. P.20 speaks of an experienced Medical Practitioner, preferably residing in the locality, to do the work of supervising the medical units at "the Centre". No reference is made to R.1 in that para. Reference to R.1 is made only in para 6. The honorarium was fixed in relation to the work to be done by the Medical Adviser.

After considering all these facts, I arrive at the conclusion that an office of Medical Adviser had been created at "the Centre" independently from its incumbent.

23. Coming to the question whether the office was under "the Government" we have first to examine the exact position in law of "the Provedoria". The word "Provedoria" means an institution created to provide or cater for something. The official name in full of the institution in our case, is in Portuguese, "Provedoria da Assistencia Publica" and in English "Institute of Public Assistance". "The Provedoria" was created by the L. D. 1200 of 7th August, 1947, as a body subordinate to the Directorate of Civil Administration Services. L. D. 1200 was later on amended by L. D. 1209 dated 27-11-47. These two Legislative Diplomas were repealed by L. D. No. 1984 dated 7-4-60 which governs "the Provedoria" up to the present day. I shall consider the main provisions of the L. D. 1984.

By Art. 1 "the Provedoria" was declared to be an autonomous body with juridical personality and financial and administrative autonomy. Art. 2 provides that the functions of "the Provedoria" are essentially to co-ordinate, to inspect and superintend the activities of all the Social Welfare Organizations which are maintained or subsidized by the State or by local autarchies run by private parties. "The Provedoria" is to work and exercise its functions in collaboration with the Government Health Services. Art. 3 provides that "the Provedoria" shall help corporate bodies of public utility and institutions or foundations of assistance and welfare. In the exercise of these functions "the Provedoria" can grant subsidies, give donations, gift movable and immovable property in their possession for the purpose of rendering assistance and welfare. Art. 4 provides that "the Provedoria" can entrust some aspects of assistance and welfare to the interested parties. It can requisition buildings which are earmarked for assistance and welfare. Art. 5 lays down that for the purpose of enforcing its aims "the Provedoria" shall prepare reports on budget of any organization of assistance or welfare, which are to be submitted for the approval of the Governor-General; suggest any alterations in such budgets; supervise the implementation of the budgets which are approved; require that assistance and welfare organizations whether public or private, comply fully with the aims of their articles of association; work for the creation or re-constitution of such bodies and propose to the Government the extinction or dissolution of those which have ceased to function. By its Art. 6 of the Diploma, determines what should be the funds of "the Provedoria". Those funds, according



to that Art. are (1) income from the lottery (which according to the petitioner is a State monopoly); (2) the income from special stamps for public assistance; (3) subsidies from the State or local autarchys; (4) 20% of the fines recovered from infringement of municipal bye-laws or other such regulations; (5) a share in the annual foreigners' residents' tax; (6) a share in the customs recoveries; (7) proceeds of sale of seized articles; (8) some fines imposed for infringements; (9) donations which are earmarked for public assistance and welfare and any other income which by law may be allotted to "the Provedoria". Art. 11 provides for a reserved fund of "the Provedoria" out of some Government funds. Art. 14 relates to the administration. It provides that the administration of "the Provedoria" shall be carried on by "the Provedor" and the "Council of Provedoria". Art. 15 provides that the Governor-General shall give overall orientation to the work of "the Provedoria" by passing for that purpose orders and instructions which he may deem convenient. Art. 17 enumerates the powers under Arts. 3, 4 and 5, which shall be exercised by the "Provedor". He is also given the functions of representing "the Provedoria" and the disciplinary powers over its employees. The functions of the Council of Provedoria under Art. 19 are to deliberate over matters mentioned in Clause (a) of Art. 3, Clause (a), (c) and (d) of Art. 4, Clause (c) of Art. 5, Clause (b) of Art. 11; to debate the budget and the accounts of "the Provedoria" which are to be submitted for the approval of superior authorities. To supervise the allotments of income, its collection and the payment of expenses. This Art. further provides that the deliberation of the Council of Provedoria shall only have executory force after they are approved by the Governor-General. Art. 20 lays down that "the Provedoria" and members of the staff of the office of "the Provedoria" and of its affiliated bodies shall be Government servants and shall enjoy all the rights and privileges and perform all the duties inherent to the said rights including the right to pension. Art. 22 provides that the post of "Provedor" and of the members of the staff of the office of "the Provedoria" and its affiliated bodies shall in future be filled up according to the terms and conditions which may be established by the rules and regulations made in that behalf. Art. 23 provides that until regulations are made, in compliance with the provisions of L. D. 1984, the services of "the Provedoria" and its affiliated bodies shall continue to be regulated by the rules which were then in force. Attached to the Diploma there is a Schedule wherein all the posts of "the Provedoria" are mentioned.

Under L. D. 1984, the power of appointment is not given to "the Provedoria", to the "Provedor" or to the Council of Provedoria. It was retained with the Government. That power was delegated to the "Provedor" in September 27, 1966, and was exercised by the "Provedor" as an agent of the Government.

After a detailed scrutiny of the provisions of L. D. 1984, there can be very little doubt that "the Provedoria" in an autonomous body exercising functions of and powers vested in the Government and was entirely controlled by the Government despite its autonomy. I am unable to accept the contention of Dr. Lobo in this regard that "the Provedoria" was a totally autonomous body exercising functions uncorrelated with the activities of the State and that any person occupying an office under "the Provedoria" or at any of its affiliated institutions was not occupying an office under "the Government".

In 'Guru Gobinda Basu v/s. Sankari Prasad Ghosal and Others', AIR 1964 S.C. 254, the question was whether the Auditor of the two Government companies, the Hindustan Steel Ltd. and the Durgapur Projects Ltd. was holding an office under the Government. Though S. 224 of the Companies Act empowered the company to make the appointment of an Auditor, the appointment of a Government company rested solely with the Central Government. The Comptroller and the Auditor General of India exercised full control over the Auditors of the Government company. It was held that if the matter was looked at from the point of view of substance rather than of form, an Auditor was an office under the Government. The office of Medical Adviser at "the Centre" bears resemblance to the office of Auditor in Guru Gobinda.

It seems to me that the office which R.1 was occupying answers the tests laid down in 'Shivamurthy Swami Inamdar v/s. Agad Sanganna Andanappa' (1971) 3 S.C.C. 870. The appointment of R.1 was made, by the Government or at any rate, on behalf of "the Government". It was not challenged that "the Government" had the right to remove R. 1 from the office he was occupying. The remuneration was paid from the funds credited by "the Government" out of

its own resources. The functions of R.1 were clearly marked, and I have already enumerated them. "The Centre" was formed by "the Government" for rendering assistance and medical help to members of the public in general of some localities. I must admit that there is no clear evidence that "the Government" was exercising control over the performance of the functions assigned to the office of R.1, but it can generally be deduced from the powers and responsibilities vested in "the Provedoria" that "the Provedoria" through its administrative agencies had to see that these functions were exercised.

Dr. Lobo then contends that in any event, in the present case R. 1 was not appointed by "the Government". This question must be decided from the various letters which relate to the engagement of his services. The first one bears the date April 27, 1966 (Exh. R. 1/3). In this letter "the Director" makes a request to R. 1 to look after the section of the First Aid for minor surgical emergencies at the out-door Section of "the Centre". "The Director" further states that he would inform R. 1 about all the terms and conditions of service after he had obtained an approval of a detailed proposal of work in the Surgical Section. This letter was followed by letter dated May 20, 1966 (Exh. P. 20). The letter states that "the Centre" which had recently been opened at Goa Velha for rendering assistance to the public required a medical practitioner, preferably resident in the locality in order to render full-fledged medical assistance to the surrounding villages, mostly inhabited by poor and helpless people, free of charge. A proposal is made in the letter to "the Government" for the establishment of a maternity and small First Aid Ward and also a First Aid Unit for minor surgical emergencies at the out-door during working hours. These services were to be supervised by a Medical Adviser. The name of R. 1 was proposed to supervise the services of the two units at "the Centre". This proposal was approved by Government as a temporary arrangement, by the letter dated June 7, 1977 (Exh. P. 21). The approval was communicated to R. 1 by the letter of "the Director" dated June 10, 1966. It is stated in this letter that superior sanction has been obtained for the approval of R. 1 as Medical Adviser to supervise the said two services and work between 11 a. m. and 1 p. m. on an honorarium of Rs. 200/-. In the said letter R. 1 was also requested to look after the health of the interned children and personnel working at "the Centre". R. 1 started working at "the Centre" in June 1966. The exact date is not known. It is argued by Dr. Lobo that P. W. 2, Pereira had stated that R. 1 started working pursuant to the letter dated April 27, 1966. Even if that be so, it cannot be said that the proposal regarding the terms and conditions of service made to "the Government" by "the Director" on May 20, 1966, the approval of "the Government" on June 7, 1966 and the communication of the approval made by "the Director" to R. 1, do not form part of the appointment and conditions of service of R. 1. The steps taken on the 7th June and 10th June have to be deemed to have retrospective effect. To my mind the cumulative effect of all the facts contained in these letters was that there was an appointment of R. 1 made by or on behalf of "the Government" to an office.

24. This takes us to the question as to whether the office held by R. 1 was an office of *profit*. The Medical Adviser at "the Centre" was given an honorarium of Rs. 200/- per month for supervising the work of medical assistance rendered by "the Centre". He was to attend work from 11.00 a. m. to 1.00 p. m. He started working way back in June, 1966. The contention of Dr. Lobo is that the amount was paid by way of honorarium and that there was no profit that could be made out of that amount. His argument is that honorarium is *prima facie* a compensatory allowance for out of pocket expenses until it is proved to be a fee for work done. The dictionary meaning of honorarium embraces pay as well as allowance. It may also mean remuneration paid to professionals like doctors or lawyers for the work rendered by them. There is nothing on record which enables us to say that the whole amount of Rs. 200/- or even a portion of it was given to R. 1 for out of pocket expenses so as to bring the honorarium into the category of allowances. The words "monthly allowance", occurring only once in the letter of May 10, 1966, are not sufficient to displace this finding. In the letter of approval the word "honorarium" is used. Both, in the letter conveying approval (10-6-66) and in the pleadings the word "allowance" is not used.

"Profit", observed Their Lordships of the Supreme Court in Ravanna Subanna's case (AIR 1954 S.C. 653), connotes the idea of pecuniary gain. If there is really a gain, its

quantum or amount would not be material, but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit. On facts, Ravanna Subanna, who was the Chairman of the Taluka Development Committee was given a fee of Rs. 6/- per sitting of the Committee that he had to attend. Though in terms Rs. 6/- was said to be a fee, Their Lordships observed that the amount was not meant to be paid by way of remuneration or profit, but was given to him as a consolidated fee for out-of-pocket expenses which he had to incur for attending the meetings of the Committee.

In the case before me the amount paid was Rs. 200/- per month for working at "the Centre" between 11 a.m. and 1 p.m. As I have stated, R. 1 was engaged way back in June 1966, twelve years ago when the cost of living was much lower than what it is nowadays. It was pleaded in the petition that the amount was given to R. 1 as pay. R. 1 in his written statement asserted that the amount was an honorarium given to him. From that fact, he concluded that it could not be held that he was occupying an office of profit. The dictionary meaning of "honorarium" includes "fee", "pay" and also "allowance". R. 1 has not stated that the sum of Rs. 200/- was an allowance, neither has he stated what were his out-of-pocket expenses. He was selected to the office because he was residing in the same village where "the Centre" is. In the circumstances the question that arises is whether the sum of Rs. 200/- was given to him as a compensatory allowance. The question is more of substance than of form. Even as regards form, the word used to designate the amount paid to R. 1 was "honorarium". It is not possible therefore, without making violence to language, to hold that R. 1 was receiving a compensatory allowance.

Darbara Singh, the respondent in A.I.R. 1969 S.C. 262 was the Chairman of a Panchayat Samiti in Punjab and was paid a monthly consolidated allowance of Rs. 100/- in lieu of allowances, for performing all official duties and journeys concerning his work, including that of attending all meetings, supervising plans, projects, schemes and other works and also for discharging all lawful obligations and implementations. S. Umrao Singh, his opponent contended that Darbara was occupying an office of profit. The dispute ultimately reached the Supreme Court. Their Lordships held in that case that Umrao Singh had to prove that the amount of Rs. 100/- per month was excessive for the purposes for which it was paid, namely, defraying the expenses inherent to the discharge of Darbara's functions as Chairman of the Panchayat Samiti.

The question whether a member of the Wage Board for Sugar Industry was an office of profit fell for the consideration of Their Lordships of the Supreme Court in 'Karbhari Bhimaji Rohamare vs. Shankar Rao Genuji Kolhe and Others', (1975 (1) S.C.C. 252). A member of the Wage Board was, according to the terms of his appointment, to be paid an honorarium of Rs. 25/- per day of the meeting of the Wage Board. He was also allowed to draw travelling allowance and daily allowance at a prescribed rate. There was no dispute that the daily allowance and the travelling allowance would not make the membership of the Wage Board an office of profit because these two would be compensatory allowances. The whole controversy centred around the honorarium of Rs. 25/- given to the members of the Wage Board. It was contended that Item II of the Schedule I annexed to the Bombay Legislature Members (Removal and Disqualification) Act, 1956, specifically laid down that the compensatory allowance to be given was to be travelling allowance, the daily allowance or such other allowances which were paid to the holder of the office for the purpose of meeting the personal expenditure in attending the meeting of the Committee or body or in performing any other function as the holder of the said office, and that the honorarium which is not mentioned in the said item could not be brought within the meaning of the words "such other allowances". Reference was made to the dictionary meaning of the word "honorarium"; Their Lordships stated that in one aspect "honorarium" and "fee" were used almost as though they are interchangeable terms. It is evident that Their Lordships held that even of honorarium meant fee or pay the honorarium of Rs. 25/- paid to the member of the Wage Board could not be said to be a salary as it was not a fixed payment paid periodically for compensation of work. Their Lordships stated that the dictionary meaning was not of much help and they expressed the opinion that the matter must be considered as a matter of substance rather than of form, of the essence of payment rather than its nomenclature. Their Lordships referred to Ravanna Subanna and S. Umrao Singh.

After considering the case law and the circumstances of this case, I am unable to agree with R. 1 that what he was receiving was merely a compensatory allowance for out-of-pocket expenses. His office was an office of profit.

25. I now come to that part of the fourth issue which involves the question as to whether the office of "I.M.P." occupied by R. 1 was an office of profit under "the Government", within the meaning of S.100(1)(a) of "the Act". This issue need not detain me long because this very question came to the scrutiny of the Supreme Court in 'Madhukar G. E. Pankakar vs. Jaswant Chobbildas Rajani and Others', AIR 1976 S.C. 2283. Krishna Iyer, J., speaking for the Court observed, on the question as to whether the "I.M.Ps." were holding an office, that there was no office of "I.M.P." under the E.S.I. Corporation. The number of "I.M.Ps." varies. Any medical practitioner who is desirous of being an "I.M.P." can request "the Government" to be enlisted. The panel of doctors under the E.S.I. Corporation was an elastic one. It could be contracted and expanded. There is no office left vacant by an "I.M.P." in the E.S.I. Corporation if an "I.M.P." leaves his engagement with the Corporation. The test of continuity of the office is not satisfied by "I.M.Ps.". Their Lordships therefore held that "I.M.P." were not holders of an office. Distinction was sought to be drawn by Shri Usgaonkar, between A.I.R. 1976 S.C. and the present case on the ground that there the post of "I.M.P." was said to be under the State Government whereas here, under the Central Government. I need not go into this question since I have to hold, following the decision in 1976 S.C. 2283, that R. 1 was not holding any office with the E.S.I. Corporation.

26. The two issues, namely, 5 and 6 which are left will now be disposed of together. It is contended by the petitioner that in view of the fact that the electors knew that R. 1 was disqualified to stand for the election it has to be held that the votes cast in favour of R. 1 were votes cast away by the electors and that, therefore, the petitioner being the candidate who received the second highest number of votes, should be declared elected. At the outset, I agree with Dr. Lobo that the fact that the electors knew that R. 1 was disqualified from standing for election and that they had, notwithstanding such knowledge, cast their vote in favour of R. 1 with a view to casting their votes away, was not pleaded. Apart from this fact there is nothing on record which permits me to give such a finding in favour of the petitioner. The only evidence on record is that the petitioner had stated in his speeches during the election campaign that R. 1 was continuing to work at "the Centre" and that the voters should consider this fact while casting their votes. This statement made by petitioner to the electors is not sufficient to lead me to the conclusion that the electors knew that R. 1 was occupying an office and that the office R. 1 was occupying was an office under "the Government" and that the office was an office of profit. Not a single elector was brought to the Court to depose that he knew that R. 1 was disqualified from being elected and that all the same he cast his vote in favour of R. 1 with a view to casting it away.

27. The question of throwing away of votes, stated Their Lordships of the Supreme Court in 'Keshav Lakshman Borkar vs. Dr. Deorao Lakshman Anande' (A.I.R. 1960 S.C. 131), cannot arise in the absence of some special pleadings that particular voters had cast their votes with knowledge or notice that the candidate for whom they had voted was not eligible for election and that consequently they had deliberately thrown away their votes in favour of the disqualified person. In Dr. Deorao Anande no allegation of knowledge or notice was made in the petition and the Supreme Court held that the appellant could not be heard to say that he might have proved the same had the respondent raised an issue on the point.

Thiru John (AIR 1977 (3) SCC 540) was relied upon by Shri Usgaonkar in support of his contentions on these issues. In my opinion, however, far from supporting his case the observation there entirely supports the contention of R. 1. The question there was: Should all the votes that were put in favour of Thiru John, who was disqualified, be considered as votes thrown away and as a consequence whether V. Subrahmanyam, the second contestant, who secured 300 votes against the third contestant, Mohana Rangam, should be elected. Their Lordships answered this question in the negative. There as here it was nobody's case that the electors who voted for the disqualified candidate had at the time of the election, knowledge or notice of his statutory disqualification. Their Lordships further observed:

Had the electors notice of Thiru John's disqualification, how many of them would have voted for him, how many for the other contesting candidates, including Subrahmanyam and Rangam, and in what preferential order, remains a question in the realm of speculation and unpredictability. In the instant case apart from the statement of the petitioner that he had stated that R. 1 was a doctor working in "the Provedoria" there is no other fact to show that the electors had knowledge or notice that R. 1 was statutorily disqualified to stand for election. Electors from various localities should be examined to show that they were aware not merely that R. 1 was a doctor but that he was occupying an office of profit under "the Government" and was for this reason disqualified. In *Thiru John Their Lordships referred to Vishwanatha Reddy v. Konappa Rudrappa Nadganda* (AIR 1969 S. C. 604) wherein it was held that the votes cast in favour of the disqualified candidate may be regarded as thrown away, even if the voters who had voted for him were unaware of the disqualification, and the candidate securing the next highest number of votes was declared elected. Shah I., who spoke for the Court in *Vishwanatha's* case was, however, careful to add: —

"This is not to say that where there are more than two candidates in the field for a single seat and one alone is disqualified, on proof of disqualification all the votes cast in his favour will be discarded and the candidate securing the next highest number of votes will be declared elected. In such a case, question of notice to the voters may assume significance, for the voters may not, if aware of the disqualification, have voted for the disqualified candidate."

31. Shri Shirodkar, learned advocate for R. 2, contends, on the sixth issue, that the Maharashtrawada Gomantak Party never succeeded in getting their candidate returned by "the Constituency" in the past. His case is that in the event of the election of R. 1 being declared void his client, R. 2 should be

declared as elected because according to him difference of votes between the petitioner and R. 2 are hardly 200 votes and that votes cast in favour of R. 1 or at least a big majority of them would be cast in favour of R. 2. There are no facts on record to support this contention. It is difficult to fathom what the result would be, had the nomination of R. 1 been rejected or had the electors known that R. 1 was disqualified. *'Sheo Murar and Others v. State'* (A. I. R. 1955 Allahabad 128) on which Shri Shirodkar relies is not of much help to the case of R. 2.

32. The first respondent was occupying an office of profit under the Government on the date of the scrutiny, on the date of the election and continued to occupy it even thereafter. He worked at the Centre of Assistance of the Provedoria as a Doctor up to the end of the month of June, 1977 and received his pay not only for the month of May, 1977 but also for the month of June that year. He submitted his resignation but latter on wrote to the Director of Provedoria withdrawing it and expressed the desire to continue to work at the Goa Velha Centre on Rs. 200/- per month. It was only when this petition was filed that the petitioner wrote his final letter reiterating his desire to leave his office and sent back the pay for the months of May and June. He was at the relevant time disqualified from standing for the election of a Member of the Legislative Assembly.

33. The Election Petition is allowed in par. The election of the respondent no. 1 is declared to be void. However, the prayer of the petitioner Shri Pankar to declare him as elected to the Assembly is dismissed. Rs. 500/- shall be paid to the petitioner as cost of this petition.

Sd/-

(Tito Menezes)

Judicial Commissioner.